

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KRAFT FOODS GLOBAL, INC., THE)
KELLOGG COMPANY, GENERAL)
MILLS, INC., and NESTLÉ USA, INC.,)
)
Plaintiffs,) No. 1:11-cv-08808
)
v.) Judge Steven C. Seeger
)
UNITED EGG PRODUCERS, INC.,)
UNITED STATES EGG MARKETERS,)
INC., CAL-MAINE FOODS, INC.,)
MICHAEL FOODS INC., and ROSE)
ACRE FARMS, INC.)
)
Defendants.)
)

STATUS REPORT

During the September 28, 2023 Final Pretrial Conference, the Court asked the parties to raise any issues for the Court's consideration by October 6, 2023. Defendants United Egg Producers, Inc., United States Egg Marketers, Inc., Cal-Maine Foods, Inc., and Rose Acre Farms, Inc. submit this Status Report to raise an issue regarding the testimony of Plaintiffs' expert Dr. Jayson Lusk.

The parties have conferred regarding the testimony of Dr. Lusk. Plaintiffs originally offered Dr. Lusk's opinions, set forth in his expert report, to rebut the opinions offered by Defendants' animal welfare expert Dr. Michael Darre. Defendants do not intend to call Dr. Darre at trial. Nevertheless, the parties agreed that Plaintiffs may attempt to offer Professor Lusk's opinions to rebut the testimony of Dr. Armstrong, the former chair of UEP's Scientific Advisory Committee on Animal

Welfare, consistent with Judge Pratter's ruling in the DAP trial. *See* MDL Docket, ECF No. 1975 (Sept. 23, 2019 Order) ("Prof. Lusk will be allowed to testify to rebut hybrid or expert testimony of Dr. Armstrong so long as he stays within the confines of information that was included in his rebuttal expert report."). Plaintiffs have agreed that any testimony offered by Professor Lusk will remain within the confines of his original rebuttal report and will be presented, if at all, in Plaintiffs' rebuttal case. However, Plaintiffs have also stated that they are not in a position to provide guidance on the scope of Dr. Lusk's opinions beyond representing that it will "be responsive to Dr. Armstrong's trial testimony and other testimony from Defendants' case, as appropriate."

Defendants believe that several of the opinions set forth in Dr. Lusk's rebuttal expert report may be inadmissible because they are (i) outside the scope of Dr. Armstrong's anticipated testimony, (ii) outside the scope of evidence the Court has deemed relevant and/or proper for an expert, and/or (iii) outside the scope of Dr. Lusk's expertise (who is an economist, not an animal welfare expert). Plaintiffs have expressed a willingness to have a further discussion regarding Dr. Lusk's opinions prior to Dr. Lusk taking the stand. Given that the scope of Dr. Lusk's rebuttal testimony is tied to the scope of Dr. Armstrong's testimony, which Defendants plan to introduce in their case-in-chief, Defendants do not believe a motion to exclude the opinions of Dr. Lusk is ripe at this time.

We write to make the Court aware of this issue, reserve all rights to challenge Dr. Lusk, and ask the Court for guidance on how it would like to handle this issue.

Dated: October 6, 2023

Respectfully submitted:

/s/ Robin P. Sumner

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